IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 3058 of 1997

Between:

M/s. B.R. Timber Panels, Hyderabad, rep. by its

Managing Partner, Sri B. Ramesh, Hyderabad.

..... PETITIONER

And

1 The Labour Court, Hyderabad-I, rep. by its Presiding Officer
Chandravihar Building 2nd Floor, M.J. Road,
Hyderabad.
2 Sri Syed Anwar-ul-Haq, S/o late Syed Jalal Saheb
R/o 6-3-605/3 Behind Zilla Praja Parishad Office,

Khiratabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to call for the records from the 1st respondent and issue a Writ, Order or Direction, particularly one in the nature of Writ of Certiorari, and quash the order passed by the 1st respondent in M.P.No.203 of 1993 (old M.P.No.8 of 1990) dated 17-1-1997, as illegal, unjust, contrary to law, perverse and without jurisdiction; and grant all consequential benefits to the petitioner company;

Counsel for the Petitioner: Mr.A.K.Jayaprakash Rao

Counsel for the Respondent No.1 & 2: Mr. Mirza Nisar Ahmed Baig

The Court made the following :

ORDER:

This writ petition is filed by the petitioner-firm represented by the Managing Partner, assailing the order of the 1st respondent in allowing M.P.No.203 of 1993 dated 17-01-1997 filed by the 2nd respondent herein claiming an amount of Rs.1,26,825/- under 11 items of claim.

2. The facts leading to the filing of the writ petition are as under:

The 2nd respondent was sales executive under the petitioner-firm canvassing for the sale of the goods manufactured by the petitioner, for which he is not only entitled for the salary but also for commission. The 2nd respondent filed petition under Section 33-C (2) of the Industrial Disputes Act (for short 'the Act') claiming certain amounts under various heads, which were specified in the petition filed before the 1st respondent. The said petition was contested by the petitioner not only as to its maintainability but also on merits. According to the petitioner, the 2nd respondent is not a workman within the meaning of Section 2 (s) of the Act and, therefore, the application is not maintainable. The said claim is on the ground that the 2nd respondent was working as a sales executive, drawing a monthly salary of Rs.1500/- besides commission. He was having supervisory powers and was acting on behalf of the petitioner before various authorities and was also holding power of attorney from the petitioner to submit tenders called by various authorities. The said nature of work carried on by the 2nd respondent itself oust the jurisdiction of the Tribunal, as the 2nd respondent cannot be termed as workman within the meaning of Section 2 (s) of the Act. Similarly, various claims made by the 2nd respondent were disputed. It was also specifically contended that items 10 and 11 are the items under which certain amounts are claimed by way of damages, and the Labour Court under

Section 33-C (2) is incompetent to consider and adjudicate upon those items. But in spite of all these objections, the Labour Court, without adjudicating the issue as to the maintainability of the petition and also the items of claims on merits, passed an order holding that the 2nd respondent is entitled for the amounts claimed and directed the petitioner herein to pay the same with interest at 12% per annum within a period of 90 days, failing which the 2nd respondent is entitled to recourse to legal action for recovery of the same. Hence the present writ petition.

3. The learned counsel for the petitioner contended that the Labour Court has committed grave error in not adjudicating upon the issue as to the maintainability as well as the merits of the claims made by the 2nd respondent and contested by the petitioner. The learned counsel for the petitioner also raised another issue that as per the decision of the Supreme Court in the case of *ML CORPORATION OF DELHI VS. GANESH RAZAK & ANR* the proceedings under Section 33-C (2) are in the nature of execution proceedings for recovery of claims already adjudicated upon and these proceedings are not intended for adjudication of the claims. Therefore, the very proceedings, as initiated by the 2nd respondent, are liable to be rejected.

4. Further, according to the learned counsel, the Labour Court did not give any finding as to various claims made by the 2nd respondent, except referring to the correspondence between the petitioner and the 2nd respondent which are not directly related to the claims made under various heads. The relief granted without adjudicating upon the claims on merits clearly vitiate the order and, therefore, the impugned order is liable to be set aside.

5. The learned counsel for the respondent, on the other hand, supported the order of the Labour Court. According to the learned counsel, not only the money to which the workman is entitled, but also any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due, the same has to be adjudicated upon, on a petition filed under Section 33-C (2) of the Act. The learned Counsel, therefore, contended that the Labour Court, on a petition filed under Section 33-C (2), has got all the powers to adjudicate upon the claims and determine the amounts to which the workman is entitled. With reference to the non-adjudication of the issue as to the maintainability of the petition, the learned counsel sought to refer to the contentions made in the writ petition and also sought to rely upon the material that is available before the Labour Court. Basing on that, the

learned counsel sought to contend that the petition filed before the Labour Court is maintainable even though the issue was not considered and a finding was recorded by the Labour Court and therefore the learned counsel sought to sustain the impugned order.

6. Heard both sides and considered the material on record.

7. The petitioner-management has come up with the present writ petition assailing the order of the Labour Court passed on a petition filed under Section 33-C (2) of the Act. The grievance of the writ petitioner is that he raised the contention as to the maintainability of the petition filed by the 2nd respondent on the ground that the 2nd respondent could not be considered as a workman in view of the nature of work executed by him. However, the Labour Court did not adjudicate upon the issue, and therefore, for such non-adjudication, the order is liable to be set aside. Even with reference to the claims made by the 2nd respondent, the contention of the petitioner is that each of the items were not considered on merits and a finding was recorded. In the absence of such consideration and recording of finding, the impugned order is not sustainable.

8. On a consideration of the impugned order and the material on record, it is clear that the Labour Court failed to adjudicate upon the issue as to the maintainability of the petitioner under Section 33-C (2) of the Act. Similarly with reference to the claims, the Labour Court did not give any specific finding after adjudication of the issues, basing on the material adduced by both sides.

9. Under the above circumstances, without going into the merits of the impugned order, the same is set aside and the matter is restored to the file of the Labour Court for fresh adjudication.

10. Accordingly, the writ petition is allowed and the impugned order is set aside and the matter is restored to the file of Labour Court-I, Hyderabad for fresh adjudication on all the issues raised by the parties, after giving sufficient opportunity to the parties. The lower Court is directed to dispose of the matter within three months from the date of the receipt of the order.

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(S.ANANDA REDDY,J)

14-09-2004

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Note:

Issue CC by three days

(B/o)

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To

1.The Presiding Officer, Labour Court,Hyderabad-1, Chandravihar Building 2nd Floor, M.J. Road,
Hyderabad. (with records)
2 Two CD copies.